

## R E M A R K S

- Claims **2, 3, 5-47, 50, 59 and 116-125** were pending and stand rejected
- Claim **125** is objected to  
Upon entry of this Amendment:
- Claims **2, 3, 5-47, 50, 59 and 116-125** will be pending in the present application
- Claims **2 and 125** will be amended
- Claims **2, 49, and 116** will be independent

### **A. Correction to Claims 2 and 125**

Claim **2** has been corrected to remove an extraneous “and” after the first step (*storing information...*).

Claim **125** has been corrected to include a period at the end. We are grateful to the Examiner for bringing this informality to our attention. We respectfully request the Examiner withdraw the objection to Claim **125**.

### **B. Section 103(a) Rejection**

Claims **2, 3, 5-47, 49-50 and 116-125** stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,950,632 issued to Reber et al. (“Reber”) in view of U.S. Patent No. 6,108,685 issued to Kutzik et al. (“Kutzik”).

We respectfully traverse all of the Examiner’s Section 103(a) rejections.

#### **1. Independent Claims 2, 49 and 116**

The Examiner has failed to establish a *prima facie* case of obviousness with respect to any of Claims **2, 49, and 116** (or any claims dependent therefrom).

We respectfully submit that Reber and Kutzik (alone or in combination) do not teach or suggest all of the features of any of Claims **2, 49, and 116**. The rejections cannot stand for at least this reason.

We respectfully traverse the Examiner’s interpretation of cited portions of Reber and Kutzik, as discussed further below.

Every rejection relies on a combination of Reber and Kutzik. We respectfully dispute the Examiner’s asserted motivation to combine the cited

references. The rejections fail at least for the failure to establish a motivation that is supported by the cited references to provide for specific claimed features.

**(a) No suggestion of communication between two containers for storing medicine**

Contrary to the Examiner's assertions, there is no suggestion in Kutzik or Reber of communication between two medicine containers, much less wireless communication. Also, neither Kutzik nor Reber suggests the desirability of having two medicine containers communicate with one another.

Unfortunately, the Examiner appears to have misread both the Kutzik and Reber references with respect to this subject matter.

The Examiner asserts: "Reber discloses...wirelessly communicating a signal between the first container and a second container the second container adapted to store a second medicine (See Reber; Col.7, lines 43-67)." [Office Action, pages 2-3].

We do not agree with the Examiner's interpretation of the cited portion, nor does Reber otherwise suggest communication between two containers for storing medicine. The cited portion describes medicine containers capable of communicating with a "medical communication apparatus 50." There is no suggestion in Reber that the "medical communication apparatus 50" is a medicine container or is adapted to store medicine. Accordingly, Reber does not suggest communication between containers for storing medicine.

The Examiner also asserts: "Kutsik [sic] discloses a communication device adapted to wirelessly communicate at least one signal between the medicine container and at least one other medicine container (See Kutsik [sic], Col.15, lines 31-67)." [Office Action, pages 12-13].

We do not agree with the Examiner's interpretation of the cited portion, nor does Kutzik otherwise suggest communication between two containers for storing medicine. The cited portion describes a "user monitoring system" that can determine "whether they are having difficulty managing their medications." A "remote case monitoring system" may use data from the "user monitoring system." Nothing in the cited portion even hints at the ability or desirability of a container for storing medicine to communicate with another container for storing medicine.

Kutzik also describes a "medication self-management detection subsystem 116" that includes "medication containers 402" stored in a "medication holder 404," but, as in Reber, there is no suggestion that any such "medication containers 402" are able to communicate with one another, or that such communication would

be desirable. [See FIGS. 4A, 4B, and 5 and accompanying text at Columns 8-9]. In particular, FIG. 5 suggests only communication between a “medication holder 404” and a “system controller 110.” There is no suggestion that the “system controller 110” may store medicine.

Accordingly, no combination of the cited references teaches or suggests communication between containers for storing medicine. In particular, the cited references do not teach or suggest any of the features generally directed to:

- *wirelessly communicating a signal between a first container adapted to store a first medicine and a second container adapted to store a second medicine (Claim 2)*
- *a communication device adapted to wirelessly communicate at least one signal between the medicine container and at least one other medicine container (Claim 49)*
- *a first container for storing a first medicine, the first container being capable of wirelessly communicating with a second container for storing a second medicine (Claim 116)*

**(b) No motivation to modify or combine the cited references to provide for all of the recited features**

Contrary to the Examiner’s assertion, there is no evidence of a motivation to combine the Reber and Kutzik references. There is nothing in the cited references that even hints at the desirability of providing for two containers for medicine that can communicate with each other (much less communicate wirelessly).

**(c) Claim 2: No suggestion of an indication of a number of times that a second container is beyond a range in which a first container is able to communicate with the second container**

Some embodiments of the present invention provide for proximity information to include the number of times each medicine container has been moved beyond a range wherein the medicine container may communicate with another medicine container. A level of compliance to a medicine schedule may be based at least in part on such proximity information [See, *e.g.*, Specification, page 37, lines 1-7].

Independent Claim 2 recites features generally directed to wirelessly communicating *a signal including an indication of a number of times that the second container is beyond a range in which the first container is able to communicate with the second container and generating at least one code based at*

*least in part on the signal, the at least one code indicating whether at least one party has complied with a schedule for taking the first medicine and the second medicine.*

Contrary to the Examiner's assertion, Kutzik does not teach or suggest any such features. As discussed above, neither reference suggests the ability of containers for storing medicine to communicate with one another.

Nothing in the cited portion of Kutzik (Col. 1, lines 43-52) (or anywhere else in Kutzik) even hints at ranges for communication or indicating a number of times something is beyond a range for communicating, much less with respect to containers for storing medicine.

Thus, the cited references do not teach or suggest any such features or the desirability of compliance with a schedule for taking medicines that is based on an indication of a number of times one container is beyond a range in which another is able to communicate with it.

For at least these reasons, the Examiner has failed to establish a *prima facie* case of obviousness of any of independent Claims **2, 49, and 116** (or any claim dependent therefrom).

## **2. Claim 3**

We respectfully dispute the Examiner's basis for the rejection of Claim 3.

The Examiner asserts that Reber teaches transmitting information regarding a first medicine from a first container to a second container and receiving information regarding the second medicine from the second container. Reber (including the cited portion) does not appear to teach any such features.

The Examiner has thus failed to establish a *prima facie* case of obviousness of Claim 3.

## **3. Claims 6-9**

We respectfully dispute the Examiner's basis for the rejection of Claims **6-9**.

The Examiner asserts that Reber teaches (i) detecting if the first container for storing medicine and the second container for storing medicine cannot communicate, (ii) determining if the first container and the second container are separated by a distance that prevents the first container and the second container from communicating, and (iii) determining a time when the containers are initially separated by a distance that prevents communicating. As discussed above, Reber (including the cited portion Col. 3, lines 2-25) does not even hint at the ability of

medicine containers to communicate with each other at all, much less the desirability of determining if such containers cannot communicate (or such a time).

The Examiner has thus failed to establish a *prima facie* case of obviousness of Claims 6-9.

**4. Claims 10-13**

We respectfully dispute the Examiner's basis for the rejection of Claims 10-13.

The Examiner asserts that Reber discloses determining a distance between the first container and the second container based on a signal received wirelessly. Reber (including the cited portion) does not appear to teach any such feature.

Thus, the Examiner has thus failed to establish a *prima facie* case of obviousness of Claims 10-13.

**5. Claims 14-17**

We respectfully dispute the Examiner's basis for the rejection of Claims 14-17.

The Examiner asserts that Reber discloses tracking a location or identifying a location of at least one of the first and second containers. One cited portion (Col. 5, lines 9-30) discusses graphical representations of dosages. The other cited portion discusses how the "medical monitoring apparatus" can establish communication with medical personnel and can have "network access." Accordingly, contrary to the Examiner's assertion, neither the cited portions nor the rest of Reber appears to have anything to do with tracking a location of a medicine container.

Thus, the Examiner has thus failed to establish a *prima facie* case of obviousness of Claims 14-17.

**6. Claims 23 and 43-45**

We respectfully dispute the Examiner's basis for the rejection of Claims 23 and 43-45.

The Examiner asserts that Kutzik at Col. 8, lines 30-42 teaches detecting if the first container has been opened or closed. We do not agree. The cited portion describes only detecting (by means of a "switch 416") if a "medication container" is present in a "medicine holder" or not. See also FIGS. 4B and 5. Nothing about the opening or closing of a medicine container is mentioned.

The Examiner has thus failed to establish a *prima facie* case of obviousness of Claims **23 and 43-45**.

**7. Claim 24**

We respectfully dispute the Examiner's basis for the rejection of Claim **24**.

The Examiner asserts that Reber teaches detecting a weight of the first container. We do not agree. The cited portion (Col. 9, lines 14-30) does not teach or suggest detecting weight to determine if a portion of medicine has been removed from a container. There is no evidence (much less substantial evidence) of such a feature in the record.

Thus, the Examiner has thus failed to establish a *prima facie* case of obviousness of Claim **24**.

**8. Claims 32-36**

We respectfully dispute the Examiner's basis for the rejection of Claims **32-36**.

The Examiner asserts that Reber teaches determining if the first medicine is incompatible with second medicine at Col. 7, line 60 to Col. 8, line 41. We do not agree. The cited portion describes only taking two different medicines at different times; it does not suggest that the medicines are incompatible or making such a determination. To the contrary, the description indicates that the user will be signaled to take both medicines, suggesting that the medicines are not incompatible. There is no evidence (much less substantial evidence) of the recited feature in the record.

Thus, the Examiner has thus failed to establish a *prima facie* case of obviousness of Claim **32** (or Claims **33-36** dependent therefrom).

Further, we respectfully dispute the Examiner's asserted bases for rejecting Claims **33-36**.

With respect to Claims **33-36**, the Examiner asserts that Reber discloses generating a warning if a first medicine is incompatible with a second medicine. We do not agree. The cited portion (Col. 8, line 29 to Col. 9, line 30) does not even remotely hint at what is asserted. There is no evidence (much less substantial evidence) of such a feature in the record.

With respect to Claims **34-36**, contrary to the Examiner's assertion, Reber is devoid of any hint of a warning that two medicines are incompatible, much less storing or transmitting any such warning.

Thus, the Examiner has thus failed to establish a *prima facie* case of obviousness of any of Claims 33-36.

**9. Claim 40**

We respectfully dispute the Examiner's basis for the rejection of Claim 40.

The Examiner asserts that Reber teaches a micro-needle based device at Col. 7, lines 33-67. The cited portion does not even remotely teach or suggest a micro-needle based device. There is no evidence (much less substantial evidence) of such a feature in the record.

Thus, the Examiner has thus failed to establish a *prima facie* case of obviousness of Claim 40.

**10. Claims 41-42**

We respectfully dispute the Examiner's basis for the rejection of Claims 41-42.

As discussed above with respect to the independent claims, Reber has nothing to do with determining whether two medicine containers can communicate.

Contrary to the Examiner's assertion, nothing in the cited portion or otherwise in Reber remotely hints at determining if a container for storing medicine is positioned so as to communicate with another container for storing medicine, much less preventing a party from accessing at least one of the containers if they are so positioned. There is no evidence (much less substantial evidence) of such features in the record.

Thus, the Examiner has thus failed to establish a *prima facie* case of obviousness of Claims 41-42.

**11. Claims 118-124**

We respectfully dispute the Examiner's basis for the rejection of Claims 118-124.

The Examiner asserts that Reber discloses positioning containers for storing medicine so that they may communicate. We disagree, as discussed herein, because Reber is devoid of any hint of containers for storing medicine communicating with one another.

Thus, the Examiner has thus failed to establish a *prima facie* case of obviousness of Claims 118-124.

## **12. Other Assertions by the Examiner**

Our failure to specifically address other assertions and bases for rejection by the Examiner will not be taken as an indication that we necessarily agree or disagree with those assertions. In light of the Examiner's apparent misinterpretation of the cited references with respect to the independent claims, as discussed herein, it is not necessary to discuss all of the Examiner's assertions at this time, although we reserve the right to do so in the future.

For at least the reasons stated herein, we respectfully request allowance of the pending Claims 2, 3, 5-47, 49-50 and 116-125.

### **C. Authorization to Charge Appropriate Fees**

Please grant a petition for any extension of time required to make this Response timely.

We do not believe that any fees are necessary for this response.

If necessary, please charge any appropriate fees necessary per the following information:

Deposit Account: 50-0271

Order No.: 00-007

Please credit any overpayment to the same account.

*A duplicate copy of this authorization is enclosed for such purposes.*



**D. Conclusion**

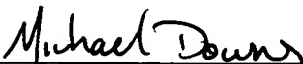
It is submitted that all of the claims are in condition for allowance. The Examiner's early re-examination and reconsideration are respectfully requested.

If the Examiner has any questions regarding this amendment or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at [mdowns@walkerdigital.com](mailto:mdowns@walkerdigital.com).

Respectfully submitted,

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Date

  
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